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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,029	02/19/2004	Michael Scott Prodoehl	9548	5615

27752 7590 10/30/2006

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER

COLE, ELIZABETH M

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 10/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding:

Office Action Summary

Application No.

10/782,029

Applicant(s)

PRODOEHL ET AL.

Examiner

Elizabeth M. Cole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,6,10-14,16,17,19,21,22 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6,10-14,16,17,19,21,22 and 25-30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 4, 6, 11, 12, 16-17, 19, 21-22, 25-27, 30 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Trokhan, U.S. Patent No. 4,637,859. Trokhan discloses a tissue product having a basis weight of 9-95 gsm, wherein the tissue comprises an undulating surface of low density pillow regions and high density knuckle regions. See col. 19, line 67 – col. 20, lines 14. The basis weight of the sheet can either be uniform or different but the densities of the two regions are always different so that the pillow regions have a lower density than the knuckles. See col. 19, lines 1-53. The tissue can further comprise wet strength additives. See col. 4, lines 23-59. With regard to the fiber length set forth in claims 16 and 30, it is noted that bleached northern softwood kraft pulp has an average fiber length of approximately 1.07 mm. See col. 5, lines 45-52 of Skoog et al, U.S. Patent No. 6,17,370. It is noted that Skoog et al is not part of the rejection but is cited to show the length of the fibers already disclosed in Trokhan. Further, Trokhan teaches

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that bagasse fibers can also be used. It is noted that bagasse fibers have a length of approximately 1.7 mm. See "Fiber Morphology and New Crops", table 1. As with Skoog, this reference is relied on as evidence to show the length of the fibers already taught by Trokhan. Trokhan teaches that the tissue product can further comprise additional layers. See col. 21, lines 25-29. . With regard to the claimed modulus to tensile strength ratio and maximum stretch, Trokhan et al does not disclose these values per se, however, Trokhan et al does appear to disclose the same structure. When the reference discloses all the limitations of a claim except a property or function, and the examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention the examiner has basis for shifting the burden of proof to applicant as in *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). See MPEP § § 2112- 2112.02. Since Trokhan et al appears to disclose the identical structure but does not explicitly recite the claimed properties, the burden is shifted to Applicant to show that the Trokhan et al material does not possess the claimed properties.

4. Claims 13-14, 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trokhan, U.S. Patent No. 4,637,859 as applied to claims 1-2, 4, 6, 11, 12, 16-17, 19, 21-22, 25-27, 30 above, and further in view of Phan et al, U.S. Patent No. 6,328,850. Trokhan discloses a tissue product as set forth above. Trokhan differs from the claimed invention because Trokhan does not disclose that the tissue can have more than one layer wherein fibers having a length of greater than equal to 1.5 mm is positioned between two layers having an average fiber length of less than 1.5 mm.

Phan et al discloses a multi-layered paper product wherein an inner layer may comprise relatively long fibers having a length of 2.5 mm or greater which is sandwiched by outer layers comprising fibers having a length of less than 1.5 mm. See col. 4, lines 37 – col. 3, line 10. Phan teaches that this distribution of fiber lengths in a tissue product produces a tissue having excellent softness, strength and bulk. See col. 2, lines 55-67. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the paper sheet of Trokhan so that it had fibrous layers having the fiber lengths taught by Phan, motivated by the expectation that this would produce a tissue having excellent softness, strength and bulk.

5. Applicant's arguments filed 8/8/06 have been fully considered but they are not persuasive. Applicant argues that Trokhan does not teach the claimed aspect ratio and that Trokhan teaches away from the claimed aspect ratio at col. 8. However, at col. 8, Trokhan provides a preferred structure for the deflection member when used with a particular type of fiber, (northern softwood). Trokhan also teaches that the dimensions can be varied proportionally when used with other furnishes. Trokhan also teaches the use of various other types of fibers, including bagasse fibers which have a length which is greater than the northern softwood fibers but which is still within the claimed range. Trokhan does not teach away from the claimed aspect ratio but instead provides a single example of suitable dimensions for use with a single example of various types of fibers. Trokhan explicitly states that the dimensions can be changed depending upon the types of fibers used. See col. 8, lines 35-36. Further teaches that the example given is a preferred embodiment but is not the only embodiment and that different sizes

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and shapes can be used. See col. 8, lines 5-12. Trokhan also teaches that the openings can have an oval shape, which would presumably have a different aspect ratio than the particular non regular hexagon which is shown in figure 10 and discussed at col. 8. Therefore, since Trokhan does not teach away from the claimed invention but instead teaches a preferred embodiment for a particular type of fiber, but also teaches that different fiber types will require different structures for the deflection member, the rejection is maintained.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.

A handwritten signature in black ink, appearing to read "Elizabeth M. Cole".

Elizabeth M. Cole
Primary Examiner
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e.m.c